

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

ENTERED ON DOCKET  
NOV 23 1999  
PURSUANT  
TO FRCP RULES 58 & 79a

JOANNE CARN-ALVAREZ

Plaintiff

vs

CIVIL 98-2201CCC

NATIONAL CITY PROCESSING  
COMPANY

Defendant

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U.S. DISTRICT COURT  
SAN JUAN, P.R.

**JUDGMENT**

This action, filed pursuant to the Fair Debt Collection Practices Act,<sup>1</sup> 15 U.S.C. §1692, alleges that defendant National City Processing Company abused and harassed plaintiff Joanne Carn-Alvarez in an effort to collect on a check that had been returned for insufficient funds. The check had been given to the El Conquistador Hotel, as a deposit toward incidental expenses. When she wrote the check, plaintiff knew there were insufficient funds in the account to cover the check. Upon checking out of the hotel after attending a business meeting there, Carn-Alvarez paid her bill in cash. Plaintiff alleges that she asked for the return of her check. Defendant states that Carn-Alvarez was told that the deposit would be refunded by mail.

We have before us National's Motion for Summary Judgment (**docket entry 15**), raising two grounds for dismissal: first, that National is entitled to the preclusive effect of the final judgment entered against plaintiff by the Court of First Instance of Puerto Rico, i.e. res judicata, and second, that the subject of the transaction was not primarily for personal, family or household purposes and consequently, is not a "debt" as defined in 15 U.S.C. §1692(a)(5).

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<sup>1</sup>Plaintiff erroneously refers to the statute as the Federal Credit Collection Act.

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[Signature]

Title 15 U.S.C. Sec. 1692a(5) defines a debt as

any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

In her Reply to her Motion for Summary Judgment (**docket entry 20**), Carn-Alvarez specifically states, at paragraph 4(d) that she

" ... was in a business convention and related to her professional [sic]. She was not in a wedding, birth[ ] day, not a political or religious event. We believe any expenses incurred by Johan Carn in her stay at the Hotel Conquistador was[sic] related business event; and therefore, should be treated as a business expense[s]."

Plaintiff's acknowledgment that the activity was business related and the check was given for that context, removes it from the realm of the definition of "debt" under 15 U.S.C. § 1692a(5), and protection under the Act.

We additionally note that Carn-Alvarez defends her action against the argument of res judicata by pointing out the fact that she voluntarily dismissed her claim against National in the Commonwealth court. The partial judgment of dismissal was entered on December 26, 1996. It is , therefore, on that date that the statute of limitation began to run anew against National. Section 1692k(d) states that:

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(Our emphasis.) Although not discussed in the motion for summary judgment, National does raise in its answer to the complaint that the action is time-barred, inasmuch as this complaint was not filed until October 23, 1998, almost two years after the voluntary dismissal by plaintiff and well beyond the statute of limitations.

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Therefore, for the above stated reasons, the Motion for Summary Judgment (**docket entry 15**) is granted and this action is DISMISSED.

SO ORDERED AND ADJUDGED.

At San Juan, Puerto Rico, on November 19, 1999.

  
CARMEN CONSUELO CEREZO  
United States District Judge

w/c: *R. Olivares*  
*M. Lora*

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*EWB*